CR.A. No. 469/2001

XII-185 (Jail) C.J.P.R./9-94

APPEAL OF PRISONER

No. ST/NO. 13/2000 Name- भुवनदेव ठकंर

Father's Name- सरधाराम ठकंर

Residence भुवनपारा पो. धारधोडा जि. रायगढ़ age- 32 वर्ष

Sentenced to- आजीवन कारावास on- 21-3-2001

under Section- धारा 7 सपठित धारा 6 आई by विशेष न्यायाधीश (एन.डी.ए.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement संलग्न निर्णय प्रति निर्णय।
2. Date on which copy received- 21-5-2001
3. Date on which Appeal sent- 21-5-2001
4. Whether the prisoner wishes to be represented or not- X

No- ST/NO-13/2000 -Name- भुवनदेव ठकंर पि० सरधाराम ठकंर

confined in केन्द्रीय -Jail- बिलासपुर (छ.ग.)

No- 222 Dated- 24.5.2001-99

Forwarded to the श्री मान रजिस्ट्रार महो० मान० उच्च न्या० बिलासपुर (छ.ग.) to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
केन्द्रीय जेल बिलासपुर

Date of receipt in- -Office-

Date of receipt of record to accompany the-

Memo of Appeal to the Appellate Court-

No- Date.....

Forwarded to the:

Date of receipt in Appellate court-

(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.R.No.469/01 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

12-10-2006

When the matter was called out, Mr. Akhil Agrawal, counsel for the appellant was not present in the Court. This matter is regularly appearing in the cause list from 18-9-2006. Even an attempt was made to contact Mr. Akhil Agrawal, but he is not available. Therefore, Miss Deepali Pandey, Advocate, was appointed as Amicus Curiae on behalf of the accused/appellant to argue this appeal. Record was made available to Miss Deepali Pandey for preparation of the case.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/ respondent.

Arguments heard.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 21st March, 2001, passed by the 2nd Additional Sessions Judge, Raigarh, in S.T. No.13/2000, whereby learned Additional Sessions Judge after convicting the accused/appellant for commission of offence under Section 302 of I.P.C. for having committed the murder of his wife namely, Shyamvati,

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sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months.

Case of the prosecution, in brief, is that Sukhdev Ram Rathia (PW-6), brother of the accused, reported the matter to the Police Station Gharghoda to the effect that on 5th July, 1999, at about 5.30 a.m.; the accused/ appellant was attacking his wife Shyamvati and six year's son of the accused namely, Sarovar was asking him not to attack his mother. He woke up and saw that the door of the house of the accused was closed and the accused was attacking his wife inside the room, thereafter, the accused ran away with his son Sarovar. He entered the house of the accused and saw that the wife of the accused was lying dead on the ground. He went to Vinay Kumar Panda (PW-8), Sarpanch and also to the Kotwar, and informed them. Three of them went to Police Station Gharghoda and reported the matter at about 9.15 a.m. The Station House Officer of the Police Station registered the Merg (Ex.P-6) & the first information report (Ex.P-7).

The Investigating Officer left for the scene of occurrence and after giving notice Ex.P-2 to the Panchas, inquest report of the body of Shyamvati Ex.P-3 was prepared. The Investigating Officer seized one carpenter's axe and one sickle stained with blood under Ex.P-4 from the place of occurrence. He also took into possession plain soil,

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blood stained soil and broken pieces of bangles Ex.P-5 from the place of occurrence. The Investigating Officer prepared the site plan (Ex.P-10) of the place of occurrence. While in police custody, the accused gave memorandum Ex.P-11 regarding the weapons of offence i.e. sickle, carpenter's axe & wooden Genda and in pursuance of that, he got recovered the wooden Genda under Ex.P-12. Blood stained Lungi of accused was seized under Ex.P-13. Clothes of Shyamvati sent by Community Health Centre, Gharghoda were seized under Ex.P-14.

The body of Shyamvati was sent for post-mortem to Community Health Centre, Gharghoda, where Dr. M.L. Thawait (PW-12) & Dr. S. Ekka conducted post-mortem on the body of Shyamvati and prepared the post-mortem report (Ex.P-15) in which they opined that the mode of death was comma & shock on account of injury to head & brain, injury to blood vessels of neck lead to profuse bleeding and shock. The death was homicidal in nature, injury Nos.2 & 8 were responsible for immediate death. They noticed as many as 10 injuries on the external part of the body, most of them were lacerated wounds and incised wounds on various parts of the body. On internal examination, it was found that there was fracture of left temporal and frontal bones and small amount of brain was also missing from the cavity. There were multiple fractures of right mandible bone and maxilla was found crushed on account of multiple attack by hard and blunt object.

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

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Recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar, from where the report was received and the Serologist report was also received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh, from where learned 2nd Additional Sessions Judge, Raigarh, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 13 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing in the evidence of the prosecution against him and further stated that there was dispute between him and his brother Sukhdev regarding land, he is innocent. He has been falsely implicated in the crime by his brother, who committed the murder of his wife.

After conclusion of trial, learned 2nd Additional Sessions Judge convicted and sentenced the accused as mentioned earlier.

We have heard Miss Deepali Pandey, learned counsel appearing for the accused/appellant and Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

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Miss Deepali Pandey has not disputed the homicidal death of Shyamvati. Apart from that the extra judicial confession made by the accused before Sukhlal (PW-1) and the evidence of Sarovar (PW-3), son of the deceased, as also the evidence of Dr. M.L. Thawait (PW-12), who has stated in his evidence that he conducted post-mortem on the body of Shyamvati and found that face of the deceased was disfigured, brain matter was coming out of the head, there were multiple incised wounds & lacerated wounds, temporal & frontal bones were found fractured, right mandible & maxilla bones were also fractured, the deceased died due to comma & shock on account of injuries on head & brain and haemorrhage, the death was homicidal in nature, therefore, in view of the above ocular and medical evidence, it is established that the death of Shyamvati was homicidal in nature.

As far as involvement of the accused/appellant in committing the crime in question is concerned, Miss Deepali Pandey, learned counsel appearing for the appellant, at the outset, argued that from cross-examination of the prosecution witnesses it has come on record that there was animosity between the accused and his brother Sukhdev (PW-6), who lodged the complaint, on account of dispute regarding the share of land and therefore, in fact, Sukhdev killed Shyamvati. He has implicated the accused in a false case.

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On the other hand, Mr. D.K. Gwalre, learned Deputy Govt. Advocate supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the judgment of trial court and the material available on record. Conviction of the accused rests on the following points: -

1. Evidence of Sarovar (PW-3), minor son of the deceased & the accused, who witnessed the crime.
2. The accused made extra judicial confession before Sukhlal (PW-1) Kotwar, Vinay Kumar Panda (PW-8) Sarpanch, and Sushil Kumar Hota (PW-10).
3. Witness Kartikram (PW-2) saw the accused running away with his son Sarovar, clothes of the accused were stained with blood and he was holding club in his hand, as also the evidence of Sukhdev (PW-6) & Sardharam (PW-11).
4. Weapon of offence blood stained Genda was recovered at the instance of the accused and clothes of the accused were found stained with blood.

As far as the first point is concerned, Sarovar (PW-3), son of the accused & the deceased, aged about 7 years, has stated in his examination-in-chief that his father has murdered his mother with carpenter's axe and sickle. At the time of attacking his mother by his father, he was in the house, he also asked his father not to attack his

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mother. He has further stated in his evidence that when his father was beating him, he kicked him also.

Learned counsel for the appellant while drawing attention of the Court towards cross-examination of this witness (PW-3) argued that he was sleeping and he had not witnessed the crime. She further argued that in cross-examination, PW-3 has stated that his mother and father were sleeping in one room, he was sleeping in the same room, he woke up at 7 a.m., his mother was sleeping and when his mother did not wake up, he called elder brother of his father on which he said that his mother is dead. Thereafter, his father came and tried to wake up his mother, but she was already dead. Thereafter, his father took him to Amladih to the Sarpanch and said that his elder brother has committed the murder of his wife.

If we peruse the above contradictory evidence of PW-3, in examination-in-chief he has stated that he saw his father attacking his mother, whereas, in cross-examination he has stated that he was sleeping till 7 a.m. and when he woke up, he saw that his mother was dead. Being a child witness of 7 years' age, in view of the above contradictory evidence, much reliance cannot be placed on it.

As far as the second point is concerned, Sukhlal (PW-1) has stated in his evidence that while he was sleeping in his house, the

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accused came early in the morning to his house and on enquiry disclosed that he has committed the murder of his wife with carpenter's axe, sickle & Lathi. Thereafter, he took the accused to the house of Sarpanch Vinay Kumar Panda (PW-8) where on enquiry the accused again said that he has committed the murder of his wife. Thereafter, they took the accused to the Police Station. In cross-examination, Sukhlal (PW-1) has stated that there was a dispute between the accused & Sukhdev regarding the partition of land. This witness in para 4 of cross-examination has categorically denied the suggestion of counsel for the accused that it is incorrect to say that the accused stated that his wife has been murdered by his brother Sukhdev. It is also incorrect to say that the accused did not make extra judicial confession before them. Again in para 6, the suggestion of defence counsel has been denied by this witness that it is incorrect to say that the accused said that Sukhdev & Sardharam have committed the murder of his wife.

The above evidence of Sukhlal (PW-1) has been corroborated by Vinay Kumar Panda (PW-8), who was Sarpanch of the village at the relevant time. PW-8 has stated in his evidence that in the morning when he was brushing his teeth, Sushil Kumar Hota (PW-10) was present there, the accused came carrying stick in his hand and said that he has murdered his wife, his son was with him. He further said

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that had he not committed the murder of his wife, she would have got him murdered, thereafter, he was sent with the Kotwar to the Police Station. In cross-examination, PW-8 has stated that it is correct that the accused was saying that he was going to the Superintendent of Police, Raigarh for reporting the matter. It is also correct that the accused was saying that all persons have murdered his wife and he was taking the name of Sukhdev also. He has also said that there was dispute among the brothers regarding partition of the agricultural land. It is incorrect to say that Sukhdev has murdered the wife of the accused and it is incorrect that the accused has not made extra judicial confession before them. Sushil Kumar Hota (PW-10) has also corroborated the above evidence and stated in his evidence that the accused made extra judicial confession before him and Sarpanch Vinay Kumar Panda that he has murdered his wife.

Therefore, in view of the evidence of these three independent witnesses who had no animosity against the accused, one village Kotwar, second Sarpanch of the village and third Sushil Kumar Hota, who was the independent witness, it is established that the accused made extra judicial confession before them voluntarily. There was no reason for these witnesses to implicate the accused in a false case.

As regards the third point, the said extra judicial confession stands corroborated by the fact that as per the evidence of

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Kartikram (PW-2), Sukhdev informed him that the accused is quarreling with his wife on which he along with Sukhdev went to the house of the accused, he saw that the accused was running away along with his son Sarovar, his clothes were stained with blood and he was carrying a club in his hand. Thereafter, they reached the house of the accused and saw that wife of the accused was lying dead on the ground. Therefore, the extra judicial confession stands corroborated by the evidence of Kartikram (PW-2), who is an independent witness, who saw the accused running away carrying club in his hand along with his son and his clothes were stained with blood.

Sukhdev (PW-6), brother of the accused, whose relations with the accused were on inimical terms on account of the dispute with regard to share of land, has stated in his evidence that his house is adjacent to the house of the accused, at about 4 a.m. in the morning he heard the sound of quarrel between the accused & the deceased, room of the accused was closed from inside, he peeped through the corner of the door and saw that wife of the accused was lying inside, he asked the accused as to what he is doing, but he did not stop and continue to attack his wife, he immediately saw Usatram & Kartikram, informed them and called them, when they assembled in front of the door of the room of the accused, the accused came out and ran away alongwith his son.

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Even though it has been argued by learned counsel for the appellant that in fact, Sukhdev murdered the wife of the accused and the accused has been falsely implicated, but we do not find any substance in this argument for the reason that the incident happened in the early morning and the accused has not stated that he was not in the house. When Sukhdev came and attacked his wife, why the accused has not objected and how he reacted to the act of Sukhdev, has not been explained by the accused. On the contrary, he himself made extra judicial confession before three independent witnesses namely, Sarpanch Vinay Kumar Panda (PW-8), Sushil Kumar Hota (PW-10) and Kotwar Sukhlal (PW-1). Therefore, it appears to be after thought, as relations of the accused and his brother Sukhdev were not cordial, rather their relations were on inimical terms and the accused has taken a false plea in order to save himself from the crime and to implicate his brother in the crime.

As regards the fourth point, Lungi of the accused was seized and club was recovered at the instance of the accused, same were sent for examination to the Forensic Science Laboratory and as per the Serologist report, the Genda was found stained with human blood. As the blood, which was found on the Lungi, was disintegrated, therefore, its origin could not be determined, but the same was found stained with blood. Had Sukhdev, brother of the accused, committed

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the murder of the wife of the accused, then how cloth of the accused i.e. Lungi was stained with blood, has not been explained by the accused. Therefore, this circumstance, also coupled with the extra judicial confession made by the accused before Kotwar Sukhlal (PW-1), Sarpanch Vinay Kumar Panda (PW-8) and Sushil Kumar Hota (PW-10), along with the fact that the accused was seen running away carrying Genda (club) in his hand and his son, cumulative effect of all these circumstances conclusively establish the fact that the accused was in fact, the author of the crime in question and the only irresistible conclusion can be drawn from the above evidence that the accused was author of the crime in question.

For the foregoing reasons, we do not find any illegality and infirmity in the judgment of the trial Court convicting and sentencing the accused for commission of the murder of his wife Shyamvati.

In the result, the appeal being devoid of merit is liable to be dismissed and the same is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

Soma

(पीछे देखिये)